

Talon Resources, Inc. and Local Union 4592, United Mine Workers of America. Case 9-CA-29763

March 9, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by Local Union 4592, United Mine Workers of America, the Union, the General Counsel of the National Labor Relations Board issued a complaint on September 1, 1992, against Talon Resources, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. By letter of February 4, 1993, the Respondent withdrew its October 14, 1992 answer to the complaint with the understanding that the General Counsel would then move for summary judgment.

On February 10, 1993, the General Counsel filed a Motion for Summary Judgment. On February 12, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." The undisputed allegations in the Motion for Summary Judgment disclose that the Respondent has withdrawn its answer to the complaint with the understanding that this Motion for Summary Judgment would be filed. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.¹

Accordingly, based on the withdrawal of the Respondent's answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the operation of a coal mine near Campbells Creek,

West Virginia. During the 12-month period ending September 1, 1992, the Respondent sold and shipped from its Campbells Creek, West Virginia facility goods valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except) by waterway or rail not owned by the Respondent, repair and maintenance work normally performed at the mine site or at a central shop[s] of the Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the Respondent, excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

Since about December 13, 1984, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since then the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 31, 1988, through February 1993. Since about December 13, 1984, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the unit.

Since about January 16, 1992, the Respondent has failed to honor the terms and conditions of its agreement with the Union by failing to provide adequate health insurance benefits and failing to pay insurance claims of the unit employees pursuant to article XX of the agreement. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By failing to honor the terms of its agreement with the Union by failing to provide adequate health insur-

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

ance benefits and failing to pay insurance claims of unit employees pursuant to article XX of the agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to provide adequate health insurance benefits and failing to pay insurance claims pursuant to article XX, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Talon Resources, Inc., Campbells Creek, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms and conditions of its agreement with the Union by failing to provide adequate health insurance benefits and failing to pay employees' insurance claims pursuant to article XX of its agreement with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions of its agreement with the Union by providing adequate health insurance benefits and paying employees' insurance claims pursuant to article XX with interest in the manner set forth in the remedy section of the Decision.

(b) Make its employees whole, with interest, for any losses they incurred due to its failure to provide ade-

quate health insurance benefits and its failure to pay employees' insurance claims pursuant to article XX.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Campbells Creek, West Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms of our collective-bargaining agreement with Local Union 4592, United Mine Workers of America, the exclusive representative of our employees in the unit set forth below, by failing to provide adequate health insurance benefits and failing to pay employees' insurance claims pursuant to article XX of our collective-bargaining agreement. The unit is as follows:

All employees engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except) by waterway or rail not owned by us repair and maintenance work normally performed at the mine site or at a central shop[s] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by us, excluding all coal inspectors, weight bosses

at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of our collective-bargaining agreement by providing adequate health insurance

benefits and paying our employees' insurance claims pursuant to article XX.

WE WILL make our employees whole, with interest, for our failure to provide adequate health insurance benefits and our failure to pay insurance claims of unit employees pursuant to article XX of our collective-bargaining agreement with the Union.

TALON RESOURCES, INC.